



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

---

# **INVESTIGATION REPORT**

## **INVESTIGATION I94-030P**

### **MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES**

---



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry).

The complainant had been suspended and had subsequently been dismissed from his employment with the Ministry. As a result of his suspension and dismissal, the complainant had filed two grievances with the Ministry which had gone before the Grievance Settlement Board (the GSB).

During the course of the grievance proceedings, the complainant had moved to another province and had applied for an employment position with a government department in that province (the Department). The Department had written to a superintendent at the Ministry facility where the complainant had been employed (the Superintendent), requesting certain information about the complainant and his employment with the Ministry. The Superintendent had responded by letter to the Department's questions about the complainant.

The complainant was concerned that the disclosure of the information in the Superintendent's letter to the Department had been contrary to the Freedom of Information and Protection of Privacy Act (the Act).

## Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 37 of the Act apply to the personal information? If not,
- (C) Was the disclosure of the personal information in accordance with section 42 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Superintendent's letter to the Department included information about the complainant's employment with the Ministry - his date of hire, date of transfer, and the date his employment was terminated. It included the title and responsibilities of the complainant's employment position. It also included the reason for the complainant's dismissal from the Ministry, and the Superintendent's opinion about whether he would rehire the complainant.

It is our view that the complainant's date of hire, date of transfer, and the date his employment was terminated was information which met the requirements of paragraph (b) of the definition of personal information in section 2(1) of the Act.

It is also our view that the reason for the complainant's dismissal from the Ministry, and the Superintendent's opinion about whether he would rehire the complainant was information which met the requirements of paragraphs (g) and (h) of the definition of personal information in section 2(1) of the Act.

In previous Orders issued by our Office, we found that the title and responsibilities of a position of employment was not the personal information of the employee. In this case, it is also our view that the complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

**Conclusion:** The complainant's date of hire, date of transfer and the date the complainant's employment was terminated, the reason for the complainant's dismissal, and the Superintendent's opinion about whether he would rehire the complainant was personal information as defined in section 2(1) of the Act.

The complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

**Issue B: Did section 37 of the Act apply to the personal information?**

The Ministry submitted that it disclosed the complainant's personal information because it had already been made public. The Ministry stated that the personal information was a matter of

public record because the complainant's suspension and subsequent dismissal from the Ministry had been the subjects of an arbitration hearing before the GSB. The proceedings before the GSB were open to all members of the public, including media representatives, and the final written decision of the GSB was a publicly available document.

Section 37 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It is our view that under section 37 of the Act, personal information maintained by an institution can be excluded from the application of Part III of the Act only if the personal information is maintained by that institution for the purpose of creating a record which is available to the general public. In this case, the Ministry could not be said to have been maintaining the complainant's personal information **specifically** for the purpose of creating a record that was available to the general public. Therefore, it is our view that the Ministry could not rely on section 37 to exclude the complainant's personal information from the privacy provisions of Part III of the Act.

**Conclusion:** Section 37 of the Act did not apply to the personal information.

**Issue C: Was the disclosure of the personal information in accordance with section 42 of the Act?**

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry submitted that the disclosure of the complainant's personal information to the Department was in accordance with section 42(b) of the Act. Section 42(b) states that an institution shall not disclose personal information in its custody or under its control except,

where the person to whom the information relates has identified that information in particular and consented to its disclosure.

The Ministry informed us that, according to the Department, it was the usual practice of the Department to advise prospective employees during the recruitment interview that employment references would be requested from whatever sources were deemed appropriate by the Department. In addition, the Department had prospective employees, like the complainant, fill out an employment application form. The application contained a section entitled "References" which requested that applicants "name three people who know you and your capabilities and to whom we may refer in confidence". Directly below this section on the form was a notation which stated: "Note-information may be requested from sources other than those listed above".

The Ministry stated that the complainant had implicitly consented to the disclosure of his personal information by applying for employment with the Department and signing the employment application form. The Ministry submitted that the disclosure was thus in accordance with section 42(b) of the Act.

In determining whether section 42(b) of the Act applied, we considered whether the complainant had identified the personal information "in particular" and had consented to its disclosure.

The complainant had been required to complete the employment application form in order to be considered for a position of employment with the Department. The complainant had not provided the name of the Superintendent as a reference. He was not aware that the Department had contacted the Superintendent regarding his past employment until after this contact had been made. In our view, although he had signed the employment application form which stated that "information may be requested from sources other than those listed above", it cannot be said that the complainant had identified any specific information that might be obtained from these other sources. Therefore, we cannot conclude that the complainant had identified the personal information disclosed in the Ministry's letter, "in particular", nor that he had consented to its disclosure. It is thus our view that the Ministry could not rely on section 42(b) of the Act for its disclosure of the complainant's personal information.

The Ministry also stated that the disclosure of the complainant's personal information was for a "consistent purpose" within the meaning of section 42(c) of the Act. Section 42(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a consistent purpose". Section 43 of the Act further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Ministry stated that the complainant should have reasonably expected that his prospective employer would need to verify that the information on his employment application form and resume was both factual and truthful. With reference specifically to the disclosure of the Superintendent's opinion of whether the complainant was suitable for rehire, the Ministry stated that the complainant should have reasonably expected that his prospective employer would want to know this type of information.

In our view, the Ministry had compiled the complainant's date of hire, date of transfer, and the date his employment was terminated, the reason for his termination, and the Superintendent's opinion about the complainant's suitability for rehire, for internal human resources purposes, such as employee administration and performance evaluation. The Ministry subsequently disclosed this personal information to the Department for the purpose of responding to the Department's request for information about the complainant's employment with the Ministry.

Although the complainant had not identified the Superintendent as a reference on the employment application form, it is our view that by completing the form he was aware that information could be requested from sources other than those he had listed and that he might reasonably have expected that one of the sources would be an appropriate official at his last place of employment at the Ministry.

Further, it is our view that the complainant might also reasonably have expected that in such a contact, the Ministry would disclose information about his employment, including the reason for his termination and his suitability for rehire. Therefore, in our view, the Ministry's disclosure of the complainant's personal information was for a purpose that was "consistent" with the purpose for which the information had been compiled. The disclosure was, thus, in accordance with section 42(c) of the Act.

**Conclusion:** The Ministry's disclosure of the complainant's personal information was in accordance with section 42 of the Act.

## SUMMARY OF CONCLUSIONS

- The complainant's date of hire, date of transfer and the date the complainant's employment was terminated, the reason for the complainant's dismissal, and the Superintendent's opinion about whether he would rehire the complainant was personal information as defined in section 2(1) of the Act.

The complainant's job title and job responsibilities was not personal information as defined in section 2(1) of the Act.

- Section 37 of the Act did not apply to the personal information.
- The Ministry's disclosure of the complainant's personal information was in accordance with section 42 of the Act.

Original Signed By: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

October 12, 1994  
\_\_\_\_\_  
Date

\*\*\*\*\*